IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Bail Appl..No. 7315 of 2006()

AGAINST THE JUDGEMENT/ORDER IN BA.6575/2005 Dated 23/11/2005
CMP.3090/2005 of J.M.F.C.-I, ALAPPUZHA

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PETITIONER/ACCUSED NO.2:

AJITHKUMAR @ AJI, AGED 39,
S/O. CHAKRAPANI, PULIKKAPARAMBIL VEEDU,
PALLURUTHY, ERNAKULAM.

BY ADV. SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K.MOHAMMED

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADDL. DIRECTOR GENERAL OF PROSECUTION SRI. V.K. MOHANAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON 20/12/2006 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Bail Application No.7315 OF 2006

Dt. DECEMBER 20, 2006

ORDER

In this petition filed under Sec. 439 Cr.P.C. the petitioner who is the 2nd accused in Crime No. 227/2005 of Mararikkulam Police Station for offences punishable under secs.115, 120B, 307 and 302 read with sec.34 I.P.C., seeks his enlargement on bail.

2. The occurrence took place on 20-7-2005. The petitioner was arrested on 29-7-2005.

3. Adv. Sri. Mohanan, the learned Addl. Director General of Prosecutions, opposed the application.

4. Sr. Adv. Sri. B. Raman Pillai , the learned Counsel appearing for the petitioner made the following submissions in support of his request for bail:-

The petitioner is not a hired assassin. He is a close friend and neighbour of A1 at Palluruthy. The lorry which belonged to C.W. 16 was sold to C.W. 17 who in turn sold it to C.W.18. It was from C.W.18 that A1 purchased the lorry on 13-7-2005. Even though the agreement was executed in favour of A2, the payment was made by A1. C.W.19 was the broker for the transaction. A2 was having a

business in poultry. He was accompanying in the lorry on the ill-fated lorry as a cleaner only because his friend and neighbour A1 was driving the lorry. He has his wife and two children to be looked after. He has been in custody for one year and 7 months.

5. I am afraid that I cannot agree with the above submissions. A synoptic resume of the prosecution case is as follows:-

Accused Nos.6 and 7 (Sajith and Bineesh) are the managing partners of a chit company by name "Southern Himalaya Chits Pvt. Ltd." with head office at Cherayi in Ernakulam District. During the years 2002-03 deceased Ramesh was working as the General Manager in the Himalaya Chits. Subsequently the relationship between Ramesh and Accused Nos.6 and 7 became strained. Accused Nos.6 and 7 had raised an allegation that Ramesh had committed theft of five blank cheque leaves signed by them and a Bullet motor cycle bearing registration No.KRV 4766 and also the vehicular records of a jeep bearing registration No.KLL 5809. Due to the strained relationship between Ramesh and accused Nos.6 and 7, Ramesh resigned from Himalaya Chits sometime in January 2004. Ramesh, who was adept in the conduct of chitty business, soon started a similar business under the name and style "Everest Chitties" at Vedimara. Within a span of 1½ years the chitty business of Ramesh flourished and he soon started

seven branches which were very close to the premises of Himalaya Chits. The rival business started by Ramesh had badly affected the business of accused Nos.6 and 7. They, therefore, decided to do away with Ramesh. The 3rd accused (Saju @ Mrigham Saju) who was a loyal worker of accused Nos.6 and 7 was employed by them to engineer the operation. Accused No.3 preferred a complaint against Ramesh and the said case was pending trial before the J.F.C.M. Court, North Parur. One Abhilash also filed a criminal complaint against Ramesh at the instance of accused Nos.6 and 7. On account of the constant harassment by accused Nos.6 and 7, Ramesh was forced to shift his residence from Cherayi to a rented house at Vadakkumpuram in North Parur. The employees of accused Nos.6 and 7 pelted stones at the house of Ramesh at Cherayi and caused damage to his house. On 18.9.2004 an attempt was made on his life. He, however, escaped with serious injuries. On the basis of a complaint lodged by Ramesh, a case was registered against accused Nos.6 and 7 and some others. Thereafter at the instance of accused Nos.6 and 7 and pursuant to a criminal conspiracy hatched by them, the 3rd accused hired accused Nos.1 and 2 (Unni and Ajithkumar @ Aji)who were gundas and hired assassins to commit the murder of Ramesh in a manner which would ostensibly appear to be a road accident. Accused No.6 drew a sum of

Rs.50,000/- from his ATM account and paid the same to the 1st accused through the 3rd accused. Utilising the said amount a lorry bearing registration No.KRO 1760 was acquired by accused Nos.1 and 2 in the name of the 2nd accused. Accused No.3 and accused No. 4 (Shiby), who were the employees and loyalists of accused Nos.6 and 7, purchased a Qualis car and were constantly watching the movements of Ramesh. On 20.7.2005 deceased Ramesh was travelling in a red coloured Tata Safari car bearing registration No.KL-13/E 9180 from south to north along the Alappuzha - Ernakulam National Highway. Pursuant to the criminal conspiracy hatched between accused Nos.3, 4, 6 and 7, the 1st accused was communicated through mobile phone by accused Nos.3 and 4 about the whereabouts of Ramesh whom they were following in the Qualis car. Accused Nos.1 and 2 thus drove the lorry bearing registration No.KRO 1760 from north to south i.e. from Ernakulam to Alappuzha in accordance with the directions given to them through the mobile phone by accused Nos.3 and 4. When the Tata Safari car in which Ramesh, along with his family members and others, was travelling reached the place called Kanichukulangara within the limits of the Mararikkulam Police Station in Alappuzha District, the lorry driven by accused Nos.1 and coming from the opposite direction and rammed into the Tata Safari

car resulting in a head on collision and the lorry telescoping into the Safari car. The car was crushed and Ramesh, his sister Latha and his standby driver by name Shamsuddin died on the spot. Two other persons who were travelling in the car sustained grievous hurt. This, in short, is the prosecution case.

6. The 2nd accused who professes himself to be a person carrying on poultry business and a friend and neighbour of the first accused was along with the first accused figuring in the rowdy list of Palluruthy Police Station on 12-2-2001. Both A1 and A2 are accused in Crime No. 84/99 of Palluruthy Police Station for an offence punishable under Sec. 395 I.P.C. A6 and A7 were the persons who were standing to benefit by the by the extermination of their arch enemy Ramesh. On the directions of A6 and A7 it was A3 and A4 who engaged A1 and A2 to execute their ploy of murdering Ramesh in such a way as to make others believe that it was an accident. If A1 was the person who had paid the advance amount for acquiring the lorry with which the deceased was done to death, then there was no necessity for writing the agreement in the name of A2, the petitioner herein. The presence of A2 along with A1 in the lorry on the ill-fated day is also not a shear co-incidence. A1 was the person who had admittedly driving the lorry in question at the time of occurrence. If

A2 was conducting his own poultry business, he had no reason to be inside the cabin of the lorry when the occurrence took place. Thus his presence in the lorry along with A1 was not that innocent as is attempted to be made out. it must be remembered that while A1 was driving the lorry he was receiving instructions from A3 through the mobile phone regarding the relative position of the car in which deceased Ramesh was travelling. After the occurrence also A2 did not leave the company of A1. He along with A1 and others celebrated the successful execution of the "operation murder" by consuming liquor and having food together. It was A4 who arranged shelter for A2 to remain in the hiding after the occurrence. Thus A2 was not merely a passive associate of A1 but he was one of the hired assassins of the deceased. Persons like him who have no compunction to kill anybody for reward cannot be granted bail especially when the further investigation of the case is on and has not resulted in a final report being filed before court. I am not inclined to grant bail to the petitioner.

This bail application is, accordingly, dismissed.

(V.RAMKUMAR, JUDGE)

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